

2 August 1971

MEMORANDUM FOR: O/DDI, Attn:
SUBJECT : SRS Comment on Hebert/Arends Bill
Reference : OLC Memo of 23 July 1971, concerning
Hebert/Arends Bill

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1. Two principal sensations concerning the Bill: it may be a case of overkill, and in various respects its language is certainly too loose.

2. There is no question but what the Ellsberg affair has demonstrated that there are gaps which need plugging in US laws and administrative procedures. I have no quarrel, I suppose, with the idea of a Commission of this general kind, and the proposed composition looks quite responsible. At the same time, however, the US record on classified matters and security has been a fairly good one over the years. More importantly, this proposed legislation -- or perhaps almost any along these lines -- would almost certainly not plug gaps far more serious than Ellsberg:

i.e., the apparent deliberate leaking of highly sensitive intelligence, by senior USG officials, in support of particular departmental views, policies, or desired budgetary allocations.

3. Additionally, the Bill (Sec. 505) seems to be providing Congress a fine opportunity to break into executive privilege -- a question somewhat removed, in my view, from the supposed causes and purposes of this Bill. The intricacies and emotions of this question of executive privilege are beyond the competence of this Staff, but I would submit that in this respect CIA's General Counsel and OLC examine Sec. 505 with care.

4. Again, to the unprofessional eye there are various other loosenesses in the Bill which deserve attention and possible redrafting:

a. The Bill does not clearly enough insure that it relates only to practices and procedures, and not to substance. Whatever Congressional Staff statements have been made about the Bill's intent, the language of the Commission's purposes (Sec. 502) and powers (Sec. 505) would permit such intent to be bent by enthusiastic Commission members.

b. This might arise under the Bill's Sec. 503 (e) which authorizes "a lesser number" than seven members to hold hearings. We should assume that the Commission would always be

constituted of wholly responsible members. But this present loophole in the draft could possibly be seized by a very few Commission members motivated by considerations extraneous to the intent of the Bill.


c. Some tightening up should also be done to Sec. 504's provision for a Staff, since, as written, this could become a monstrous affair.

d. And the Bill should of course be amended to include State and all US Government agencies.

e. Sec. 502 (a) (2) -- the expression "in light of the need to maintain a free flow of information" is somewhat ambiguous.

f. Perhaps the most important clarification still needed relates to Sec. 502's establishing of the Commission's purposes. It is not fully clear just what is desired, nor just why such a Commission is needed, nor what differentiates "information affecting the National Security" from information which might simply embarrass the USG.

5. All in all, were I in the legal business, I would consider the present draft a fairly sloppy one, done in haste; and I would send the authors back to the old drawing board for a much more precise job, especially considering the administrative and constitutional sensitivities of the subject matter.


Chief, DD/I Special Research Staff

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ACTION	DIRECT REPLY	PREPARE REPLY
APPROVAL	DISPATCH	RECOMMENDATION
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CONCURRENCE	INFORMATION	SIGNATURE

Remarks:

[redacted]

The attached lay comments on the Hebert/Arends Bill, in response to your request.

FOLD HERE TO RETURN TO SENDER

FROM: NAME, ADDRESS AND PHONE NO.	DATE
[redacted]	2 Aug 71

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